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6 Attorneys for Plaintiff
7 NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA.
8

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
11

12 NATIONAL UNION FIRE INS. CO. OF
PITTSBURGH, PA.

13 Plaintiff,
14

15 vs.

16 NATIONWIDE MUTUAL FIRE INS. CO.;
NATIONWIDE MUTUAL INSURANCE
CO.; FIREMAN'S FUND INSURANCE
17 COMPANY,

18 Defendants.

CASE NO. '11CV0755 BEN RBB

**COMPLAINT FOR
DECLARATORY RELIEF**

19 Plaintiff NATIONAL UNION FIRE INSURANCE COMPANY OF
20 PITTSBURGH, PA. ("NU") brings this Complaint for Declaratory Relief against
21 Defendants NATIONWIDE MUTUAL FIRE INSURANCE COMPANY and
22 NATIONWIDE MUTUAL INSURANCE COMPANY (collectively,
23 "Nationwide") and FIREMAN'S FUND INSURANCE COMPANY ("Fireman's
24 Fund") and alleges as follows:

NATURE OF THE ACTION

25
26 1. NU seeks a judicial declaration pursuant to 28 U.S.C. § 2201(a) that
27 Nationwide has an obligation to indemnify Rubio's Restaurant, Inc. ("Rubio's") as
28 an additional insured under the Nationwide primary policy no. 77PR664039-3003

1 and Nationwide umbrella policy no. 77-CU-664-039-3001 issued to Alfa
2 International Seafood, Inc. (“Alfa”) for the case filed in San Diego Superior Court
3 by Timothy and Tracie Sayre, case no. 37-2009-0084537-CU-PL-CTL (the “Sayre
4 Lawsuit”) if judgment is entered against Rubio’s and Alfa, and that Nationwide’s
5 obligation to indemnify Rubio’s arises prior to any obligation to indemnify (if
6 there is any such an obligation) under the policies issued to Rubio’s by Fireman’s
7 Fund (primary policy no. MZX 80892937) and NU (umbrella policy no.
8 BE7440227).

9 **PARTIES AND VENUE**

10 2. Plaintiff National Union Fire Insurance Company of Pittsburgh, Pa. is,
11 and was at all times material to this action, a corporation domiciled in the state of
12 Pennsylvania and with its principal place of business in the state of New York.

13 3. Upon information and belief, defendant Nationwide Mutual Fire
14 Insurance Company is and was at all times material to this action, a corporation
15 domiciled in the state of Ohio with its principal place of business in the state of
16 Ohio.

17 4. Upon information and belief, defendant Nationwide Mutual Insurance
18 Company is and was at all times material to this action, a corporation domiciled in
19 the state of Ohio with its principal place of business in the state of Ohio. Upon
20 information and belief, Nationwide Mutual Fire Insurance Company and
21 Nationwide Mutual Insurance Company are affiliated companies.

22 5. Upon information and belief, defendant Fireman’s Fund Insurance
23 Company is and was all times material to this action, a corporation domiciled in
24 the state of California with its principal place of business in the state of California.

25 6. This court has jurisdiction over this matter pursuant to the court’s
26 diversity jurisdiction under 28 U.S.C. § 1332. The amount in controversy exceeds
27 the jurisdictional limits of this court.

28 7. Venue is proper because this dispute arises out of an event that

1 occurred in the Southern District of California and arises because of a lawsuit filed
2 in San Diego County in the Southern District.

3 **THE UNDERLYING CLAIM**

4 8. Rubio's Restaurant, Inc. is a corporation domiciled in the state of
5 Delaware with restaurants in many locations in the western states including San
6 Diego, California.

7 9. On or about November 11, 2008, Timothy Sayre allegedly ate a fish
8 burrito purchased from Rubio's which was made from mahi-mahi fish. As a result
9 of Mr. Sayre's ingestion of the fish burrito, Mr. Sayre allegedly suffered severe
10 neurological injuries which have necessitated medical care and may have caused
11 him permanent or long lasting injury.

12 10. The mahi-mahi fish was allegedly supplied to Rubio's by Alfa.

13 11. Mr. Sayre and his wife filed a complaint against Rubio's in San Diego
14 County Superior Court, case no. 37-2009-0084537-CU-PL-CTL on March 4, 2009,
15 asserting one cause of action for products liability. The Sayres filed an amended
16 complaint alleging that Alfa was the supplier of the mahi-mahi fish consumed by
17 Mr. Sayre. The Sayres allege general damages, including loss of earning capacity
18 and loss of consortium. The Sayres allege their damages exceed \$7 million.

19 12. Rubio's cross-complained against Alfa on the grounds that Alfa
20 supplied Rubio's with the mahi-mahi fish allegedly consumed by Mr. Sayre and
21 therefore Alfa is liable for any damages suffered by the Sayres.

22 13. Upon information and belief, Alfa tendered the Sayre Lawsuit to its
23 insurer, Nationwide. Upon information and belief, Nationwide is presently
24 defending Alfa without a reservation of rights.

25 14. Rubio's tendered defense and indemnification of the Sayre Lawsuit to
26 its primary insurer Fireman's Fund and its umbrella insurer NU.

27 15. Upon information and belief, Fireman's Fund is presently defending
28 Rubio's against the Sayre Lawsuit.

1 16. Rubio's also tendered defense and indemnity of the Sayre Lawsuit to
2 Nationwide on the basis that Rubio's is an additional insured under Alfa's primary
3 and umbrella policies pursuant to a vendor's endorsement in those policies.

4 17. Upon information and belief, Nationwide denied coverage to Rubio's
5 for the Sayre Lawsuit on the basis, *inter alia*, that Rubio's has not demonstrated
6 that the mahi-mahi fish Mr. Sayre ate was supplied by Alfa and because the cause
7 of Mr. Sayre's injuries has not been proven.

8 18. Upon information and belief, Nationwide does not dispute that
9 Rubio's is an additional insured under the primary and umbrella policies
10 Nationwide issued to Alfa.

11 **RUBIO'S INSURANCE POLICIES**

12 19. Rubio's was issued Fireman's Fund Primary General Liability Policy,
13 no. MZX 80892937, for the policy period July 21, 2008 to July 21, 2009
14 ("Fireman's Fund's Policy").

15 20. The Fireman's Fund Policy contains the following provisions as well
16 as others that may apply to this claim. The Fireman's Fund Policy provides that:

17 1. **Insuring Agreement**

18 a. We will pay those sums that the insured becomes
19 legally obligated to pay as damages because of **bodily**
20 **injury or property damage** to which this insurance
applies. We will have the right and duty to defend the
insured against any **suit** seeking those damages. . .

21 21. Under the conditions section, the Fireman's Fund Policy contains an
22 "Other Insurance" provision, which provides:

23 4. **Other Insurance**

24 If other valid and collectible insurance is available to the
25 insured for a loss we cover under Coverages A or B of
this Coverage Part, our obligations are limited as follows:

26 a. **Primary Insurance**

27 This insurance is primary except when Paragraph
28 b. below applies. If this insurance is primary, our
obligations are not affected unless any of the other

insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph c. below.

b. Excess Insurance

(1) This insurance is excess over:

...
(b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.

...

(3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(a) The total amount that all such other insurance would pay for the loss in the absence of this insurance. ...

22. Rubio's also was issued National Union Commercial Umbrella Liability Policy, no. BE7440227, for the policy period July 21, 2008 to July 21, 2009 ("NU Umbrella Policy"). The Schedule of Underlying Insurance in the NU Umbrella Policy lists that the underlying general liability policy is the Fireman's Fund Policy.

23. The NU Umbrella Policy contains the following provisions and others that may apply to this claim. The NU Umbrella Policy provides that:

I. **INSURING AGREEMENT – COMMERCIAL UMBRELLA LIABILITY**

A. We will pay on behalf of the **Insured** those sums in excess of the **Retained Limit** that the **Insured** becomes legally obligated to pay as damages by reason of liability imposed by law because of **Bodily Injury, Property Damage or Personal Injury and Advertising Injury** to which this insurance applies or because of **Bodily Injury or Property Damage** to which this insurance applies assumed by the **Insured** under an **Insured Contract**.

...

B. This policy applies, only if:

1. the **Bodily Injury** or **Property Damage** is caused by an **Occurrence** that takes place anywhere, and the **Bodily Injury** or **Property Damage** occurs during the **Policy Period**; . . .

24. Exclusions in the NU Umbrella Policy are amended by Endorsement 11, the “Bacteria Exclusion Endorsement” which provides that:

This insurance does not apply to:

Bodily Injury, Property Damage or Personal Injury and Advertising Injury or any other loss, injury, damage, cost or expense, including, but not limited to, losses, costs or expenses related to, arising from or associated with clean-up, remediation, containment, removal or abatement, caused directly or indirectly, in whole or in part, by bacteria.

This exclusion applies regardless of any other cause, event, material, product and/or building component that contributed concurrently or in any sequence to that loss, injury, damage, cost or expense.

25. Exclusions in the NU Umbrella Policy are also amended by Endorsement 6, which provides that:

This insurance does not apply to Commercial General Liability.

However, if insurance for Commercial General Liability is provided by a policy listed in **Scheduled Underlying Insurance**:

1. This exclusion shall not apply; and
2. Coverage under this policy will follow the terms, definitions, conditions, and exclusions of **Scheduled Underlying Insurance**, subject to the **Policy Period**, Limits of Insurance, premium and all other terms, definitions, conditions and exclusions of this policy. Provided, however, that coverage provided by this policy will be no broader than the coverage provided by **Scheduled Underlying Insurance**.

26. Under “Limits of Insurance,” the NU Umbrella Policy provides:

M. We will not make any payment under this policy unless and until:

1. The total applicable limits of the **Scheduled Underlying Insurance** have been exhausted by the payment of **Loss** to which this policy applies and any applicable, **Other**

Insurance have been exhausted by the payment of **Loss** .

..

...

27. The NU Umbrella Policy further provides that:

L. Other Insurance

If other valid and collectible insurance applies to damages that are also covered by this policy, this policy will apply excess of the **Other Insurance**. However, this provision will not apply if the **Other Insurance** is specifically written to be excess of this policy.

28. The NU Umbrella Policy defines “Scheduled Underlying Insurance” as follows:

1. the policy or policies of insurance and limits of insurance shown in the Schedule of Underlying Insurance forming a part of this policy

Scheduled Underlying Insurance does not include a policy of insurance specifically purchased to be excess of this policy affording coverage that this policy also affords.

29. The NU Umbrella Policy defines “Other Insurance” as:

Other Insurance means a valid and collectible policy of insurance providing coverage for damages covered in whole or in part by this policy.

However, **Other Insurance** does not include **Scheduled Underlying Insurance**, the **Self-Insured Retention**, or any policy of insurance specifically purchased to be excess of this policy affording coverage that this policy also affords.

ALFA’S INSURANCE POLICIES

30. Alfa was issued a primary Blanket Protector Commercial General Liability policy, no. 77PR664039-3003 by Nationwide Mutual Fire Insurance Company for the policy period July 14, 2008 to July 14, 2009 (“Nationwide Primary Policy”).

31. The Nationwide Primary Policy contains the following provisions as well as others that may apply to this claim. The Nationwide Primary Policy provides:

1. Insuring Agreement

1 a. We will pay those sums that the insured becomes
2 legally obligated to pay as damages because of **bodily**
3 **injury** or **property damage** to which this insurance
applies. We will have the right and duty to defend the
insured against any **suit** seeking those damages. . .

4 32. The Nationwide Primary Policy contains an “Additional Insured –
5 Vendors” Endorsement, form CG 20 15 07 04, which has a Schedule listing
6 “Rubio’s Restaurant Inc. DBA Rubios Fresh Mexican Grill” as an additional
7 insured, and “Fish and Seafood” as “Your Product,” and provides:

8 A. **SECTION II – Who is An Insured** is amended to include
9 as an additional insured any person(s) or organization(s)
10 (referred to below as vendor) shown in the Schedule, but
11 only with respect to “bodily injury” or “property damage”
arising out of “your products” shown in the Schedule which
are distributed or sold in the regular course of the vendor’s
business, subject to the following additional exclusions. . .

12 33. None of the exclusions under the “Additional Insured – Vendors”
13 endorsement are applicable to the Sayres’ claims.

14 34. No exclusion in the Nationwide Primary Policy, including the Fungi
15 or Bacteria exclusion by endorsement form CG 21 67 12 04, is applicable to the
16 Sayres’ claims.

17 35. Under the conditions section, the Nationwide Primary Policy contains
18 an “Other Insurance” provision which provides that:

19 4. **Other Insurance**

20 If other valid and collectible insurance is available to the
21 insured for a loss we cover under Coverages A or B of
this Coverage Part, our obligations are limited as follows:

22 a. **Primary Insurance**

23 This insurance is primary except when b. below
24 applies. If this insurance is primary, our
25 obligations are not affected unless any of the other
insurance is also primary. Then, we will share with
all that other insurance by the method described in
c. below.

26 . . .

27 36. Alfa also was issued a commercial umbrella policy from Nationwide
28 Mutual Insurance Company, no. 77-CU-664-039-3001, for the policy period July

1 14, 2008 to July 14, 2009 (“Nationwide Umbrella Policy”). The Schedule of
2 Underlying Insurance lists the underlying insurance as the Nationwide Primary
3 Policy.

4 37. The Nationwide Umbrella Policy contains the following provisions as
5 well as others that may apply to this claim. The Nationwide Umbrella Policy
6 provides:

7 **I. COVERAGE**

8 We will pay on behalf of the insured the ultimate net loss in
9 excess of the underlying limit or the retained limit, whichever is
10 greater, because of bodily injury, property damage, personal
11 injury or advertising injury to which this policy applies caused
12 by an occurrence, except that in a jurisdiction where we may be
13 prevented by law or otherwise from carrying out this agreement
14 that we will pay on behalf of the insured, we will indemnify the
15 insured in accordance with this agreement.

16 38. The Nationwide Umbrella Policy also defines under the “Section V -
17 Persons Insured” provision, that an insured includes:

18 F. Anyone else who is an insured under any policy of
19 underlying insurance but only to the extent insurance is
20 provided by that policy and subject to all its limitations,
21 other than the limits of that insurance.

22 39. The Nationwide Umbrella Policy defines “insured” as “any person or
23 organization qualifying as an insured in Item V. . . .”

24 40. The Nationwide Umbrella Policy further provides:

25 **G. Other Insurance**

26 The insurance provided by [t]his policy is excess over any
27 other collectible insurance, whether listed on the
28 Declarations or not. This does not apply to insurance written
as excess to our limit of insurance.

41. No exclusion in the Nationwide Umbrella Policy is applicable to the
Sayres’ claims.

FIRST CAUSE OF ACTION

Declaratory Relief

**(Priority of Coverage/Nationwide Owes Duty to Indemnify Prior to any
Duty to Indemnify (if any) Under Fireman’s Fund or NU Policies)**

42. NU hereby realleges and incorporates by reference paragraphs 1

1 through 41, inclusive, as though set forth in full here.

2 43. Rubio's requested that Fireman's Fund, NU, and Nationwide
3 indemnify it against the Sayre Lawsuit.

4 44. Nationwide contends it has no duty to indemnify Rubio's under the
5 Nationwide Primary Policy or Nationwide Umbrella Policy on the basis (but not
6 necessarily limited to) that Rubio's has not shown Mr. Sayre's injuries were caused
7 by Alfa's products.

8 45. Alfa allegedly supplied the fish in the burrito that Mr. Sayre
9 consumed. The fish is the alleged cause of Mr. Sayre's injuries, damages, and
10 losses. If Alfa and Rubio are found liable to the Sayres, they may be adjudged
11 liable to pay damages to the Sayres. Those damages are covered by the
12 Nationwide Primary Policy and Nationwide Umbrella Policy.

13 46. Nationwide owes a duty to indemnify Rubio's for the Sayre Lawsuit.

14 47. The Nationwide Primary Policy and Nationwide Umbrella Policy
15 have a duty to indemnify before there is any duty to indemnify under the Fireman's
16 Fund Policy and the NU Umbrella Policy (if there is any duty to indemnify under
17 the NU Umbrella Policy).

18 48. The Fireman's Fund Policy provides that it is excess insurance over
19 other primary insurance available to Rubio's for liability for damages arising out of
20 products for which Rubio's has been added as an additional insured by
21 endorsement. The Nationwide Primary Policy is "other primary insurance"
22 available to Rubio's because Rubio's has been expressly added as an additional
23 insured to the Nationwide Primary Policy by the "Additional Insured – Vendors"
24 Endorsement. Thus, Nationwide's indemnity obligations under the Nationwide
25 Primary Policy apply first. The Nationwide Umbrella Policy also provides that
26 anyone who is an insured under the Nationwide Primary Policy qualifies as an
27 insured under the Nationwide Umbrella Policy making Rubio's an insured under
28 the Nationwide Umbrella Policy as well.

49. An actual controversy has arisen and now exists between the parties with respect to the priority of indemnity obligations owed to Rubio's with respect to the Sayre Lawsuit. Rubio's is entitled to indemnification from Nationwide before there is any duty to indemnify under the Fireman's Fund Policy and the NU Policy (if there is any duty to indemnify under the NU Policy).

50. NU seeks a judicial declaration of the respective rights and duties of the parties under their respective policies, including a declaration that Nationwide has a duty to indemnify Rubio's against the Sayre Lawsuit up to the limits of the Nationwide Primary Policy and Nationwide Umbrella Policy before there is any duty to indemnify under the Fireman's Fund Policy and the NU Policy (if there is any duty to indemnify under the NU Policy).

PRAYER

WHEREFORE, NU prays for judgment against Nationwide, as follows:

1. For a judicial declaration that Nationwide has a duty to indemnify Rubio's against the Sayre Lawsuit, and that Nationwide's duty to indemnify up to the policy limits of the Nationwide Primary Policy and Nationwide Umbrella Policy arises before there is any duty to indemnify under the Fireman's Fund Policy and the NU Policy (if there is any duty to indemnify under the NU Policy);
2. For costs of suit; and
3. For such other and further relief as the Court deems just and proper.

Dated: April 11, 2011

GORDON & REES LLP

By: /s/ Sara M. Thorpe

Sara M. Thorpe

Elizabeth B. Vanalek

Attorneys for Plaintiff National Union Fire
Insurance Company of Pittsburgh, Pa.

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

National Union Fire Insurance Company of Pittsburgh, Pa.

(b) County of Residence of First Listed Plaintiff Pennsylvania
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Gordon & Rees LLP, 275 Battery Street, 20th Floor,
San Francisco, CA 94111, (415) 986-5900

DEFENDANTS

Nationwide Mutual Fire Ins. Co., Nationwide Mutual Ins. Co.,
Fireman's Fund Insurance Co.

County of Residence of First Listed Defendant Franklin City, Ohio
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

'11CV0755 BEN RBB**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Sec. 1332; 28 U.S.C. Sec. 2201 (a)

Brief description of cause:

Action for relief to determine indemnity obligations under insurance contracts.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Irma E. Gonzalez

DOCKET NUMBER 11-cv-00114 IEG (POR)

DATE

4/11/11

SIGNATURE OF ATTORNEY OF RECORD

[Signature]

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE